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 Local 282 Pension Trust Fund, Local 282 Annuity  
 Trust Fund, and Local 282 Job Training Trust Fund

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF NEW YORK

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	:	
In re:	:	Involuntary Chapter 11
	:	
ADVANCED READY MIX CORP.,	:	Case No.: 1-13-41795-ESS
	:	
Alleged Debtor.	:	
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**JOINT PRE-HEARING STATEMENT**

**I. Statement of Material Facts in Dispute**

1. The Petitioning Funds (as defined below), which obtained one single judgment against Advanced Ready Mix (the "Alleged Debtor") does not meet the requirement of three distinct entities holding individual claims as required pursuant to 11 U.S.C. §303(b)(1).
2. United Welfare Fund will be withdrawing as a Petitioning Creditor.
3. The judgment obtained by Suffolk Materials Corp. was on default and the amount in controversy is disputed by the Alleged Debtor.
4. The dismissal of the involuntary petition by the Bankruptcy Court is in the best interest of the creditors of the Alleged Debtor.
5. Tremco, Inc., d/b/a Euclid Chemical Co. may also be withdrawing as a Petitioning Creditor.
6. New York Commercial Lubricants, Inc., d/b/a Metrolube may also be withdrawing as a Petitioning Creditor.

7. The Petitioning Funds are “employee benefit plans” and “multiemployer plans” within the meaning of Sections 3(3) and 3(37) of ERISA, 29 U.S.C. §1002(3) and §1002(37), with their principal place of business at 2500 Marcus Avenue, Lake Success, New York 11042.
8. The Petitioning Funds are jointly administered by a Board of Trustees, comprised of an equal number of labor and management representatives in accordance with Section 302(c)(5) of the Labor Management Relations Act (the “LMRA”), 29 U.S.C. §186(c)(5).
9. Pursuant to the terms of various collective bargaining agreements between Local 282, I.B.T. (“Local 282” or the “Union”) and various employers, which includes the Debtor, employers are required to contribute to the Petitioning Funds on behalf of their employees covered by their respective collective bargaining agreements.
10. Even if the Petitioning Funds are to be considered a single entity, there still remain enough creditors to have standing regarding the Involuntary Petition.
11. The amounts listed in the Involuntary Petition are the unpaid principal contributions admitted as due in the Consent Judgment (defined in Paragraph 33 below) that the Alleged Debtor has failed to pay.
12. The Consent Judgment also includes additional amounts owed to the Petitioning Trust Funds from the Alleged Debtor.
13. Specifically, the amounts listed in the Involuntary Petition constitute the liquidated and uncontested unpaid contributions due to the Petitioning Funds for the week-ending period of January 7, 2011 through and including February 24, 2012.
14. Additionally, the Court also awarded the Petitioning Funds \$47,297.88 in stipulation balance (listed as “Judgment balance”), \$32,346.24 in interest on the stipulation balance, and \$19,892.50 in attorneys fee’s incurred through October 31, 2012.

**Statement of Material Facts Not in Dispute**

15. On March 28, 2013, the Local 282 Welfare Trust Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, and the Local 282 Job Training Trust Fund (collectively, the “Petitioning Funds”) filed an involuntary bankruptcy petition for relief (the “Involuntary Petition”) under Chapter 11 of the Bankruptcy Code against Advanced Ready Mix Corp. (the “Alleged Debtor”).
16. On April 22, 2013, the Alleged Debtor filed an answer to the Involuntary Petition.

17. On April 26, 2013, Tilcon New York Inc. filed a statement of joinder to the Involuntary Petition.
18. On December 12, 2012, the Supreme Court of the State of New York entered a judgment against the Debtor and Rocco Manzione, as a personal guarantor, and in favor of Tilcon New York Inc. in the amount of \$287,500.00 in *Tilcon New York Inc. v. Advanced Ready Mix Corp.*, Index No. 30598/2011.
19. On April 30, 2013, Tremco, Inc., d/b/a Euclid Chemical Co. filed a statement of joinder to the Involuntary Petition.
20. On May 11, 2012, the Kings County Civil Court entered a judgment against the Debtor and in favor of Tremco, Inc., d/b/a Euclid Chemical Co. in the amount of \$20,503.00 in *Tremco, Inc., d/b/a Euclid Chemical Co. v. Advanced Ready Mix Corp.*, Index No. 01490/2012.
21. On May 2, 2013, the United Welfare Fund filed a statement of joinder to the Involuntary Petition.
22. On February 28, 2013, the United States District Court for the Eastern District of New York entered a judgment against the Alleged Debtor and in favor of the United Welfare Fund in the amount of \$19,759.54 in *Local 339 Untied Services Workers Union, et al. v. Advanced Ready Mix Corp.*, Index No. 12-CV-4811 (E.D.N.Y).
23. On May 2, 2013, Suffolk Materials Corp. filed a statement of joinder to the Involuntary Petition.
24. On September 19, 2012 the Suffolk County Clerk entered a New York State Supreme Court judgment against the Debtor and in favor of Suffolk Materials Corp. in the amount of \$188,733.52 in *Suffolk Materials Corp. v. Advanced Ready Mix Corp.*, Index No. 21808/2012. A transcript of the judgment was filed in the Kings County Clerk's Office on October 5, 2012.
25. On May 3, 2013, New York Commercial Lubricants, Inc., d/b/a Metrolube filed a statement of joinder to the Involuntary Petition.
26. On April 27, 2012, the Kings County Civil Court entered a judgment against the Debtor and in favor of New York Commercial Lubricants, Inc., d/b/a Metrolube in the amount of \$5,713.34 in *New York Commerical Lubricants, Inc., d/b/a Metrolube v. Advanced Ready Mix Corp.*, Index No. 066564/2011.
27. On May 6, 2013, the Court held a hearing on the Involuntary Petition, which has been adjourned from time to time.

28. The Alleged Debtor is a party to the Association of New York City Ready Mix Concrete Producers, Inc. & Independents Contract for the period from July 1, 2008 through June 30, 2011 (the “2008 CBA”).
29. The Alleged Debtor is a party to the Association of New York City Ready Mix Concrete Producers, Inc. & Independents Contract for the period from July 1, 2011 through June 30, 2016 (the “2011 CBA, with the 2008 CBA, the “CBAs”).
30. The Petitioning Funds are maintained pursuant to a Restated Agreement and Declaration of Trust, of which there are two, one in effect through September 23, 2012 (the “First Trust Agreement”) and one in effect as of September 24, 2012 (the “Second Trust Agreement,” with the First Trust Agreement, the “Trust Agreements”) for the purposes of collecting and receiving contributions from employers and providing benefits to eligible participants.
31. Thomas Gesualdi and Frank Finkel are Trustees for each of the Petitioning Funds and plaintiffs in *Gesualdi, et al. v. Advanced Ready Mix Corp.*, Case No.: 10-CV-3499 (E.D.N.Y.).
32. On February 5, 2013, the New York District Court for the Eastern District of New York entered a consent judgment in favor of the Petitioning Trust Funds and against the Debtor in the amount of \$214,061.62 (the “Consent Judgment”) in *Gesualdi, et al. v. Advanced Ready Mix Corp.*, Case No.: 10-CV-3499 (E.D.N.Y.).
33. Louis Bisignano and Frank Finkel, Trustees of the Petitioning Funds, signed the Consent Judgment.
34. Rocco Manzione, in his capacity as principal and an authorized agent of the Debtor, signed the Consent Judgment on behalf of the Alleged Debtor.
35. The Alleged Debtor made a payment of \$58,000 toward the Consent Judgment.
36. The amount due to the Petitioning Funds exceeds the \$14,425.00 in minimum liabilities required by 11 U.S.C. §303(b).

II. **Description of the Legal and Factual Issues to be Decided by the Court**

1. Are there a sufficient number of creditors to sustain the involuntary petition?

III. **Estimated Length of Hearing**

1. The estimated length of the evidentiary hearing is two hours.

IV. **Resolution Attempts**

1. The Petitioning Funds and the Debtor have had two in person meetings since the filing of the Involuntary Petition. At one meeting, Thomas J. Ryan, the Fund Administrator, was present, and at the other, two Trustees of the Petitioning Funds, Denise Richardson and Anthony D'Aquila, were present.
2. At these meetings, the Petitioning Funds and the Debtor were unable to resolve this matter.

V. **Schedule of Exhibits**


1. The 2008 CBA;
2. The 2011 CBA;
3. The First Trust Agreement, and amendments thereto;
4. The Second Trust Agreement, and amendment thereto;
5. The Consent Judgment;
6. Debtor's \$58,000.00 bank check that was paid towards the Consent Judgment;
7. The Stipulation of Settlement filed in *Gesualdi, et al. v. Advanced Ready Mix Corp.*, Case No.: 10-CV-03499 (E.D.N.Y.), which is referenced in the Consent Judgment;
8. The Petitioning Funds' letter dated July 25, 2013, which lists contributions owed by the Debtor based on submitted remittance reports;
9. Various remittance reports submitted by the Debtor for the week-ending dates of January 7, 2011 through February 17, 2012;
10. Judgment in favor of Tilcon New York Inc. and against the Debtor;
11. Judgment in favor of Tremco, Inc., d/b/a Euclid Chemical Co. and against the Debtor;
12. Judgment in favor of United Welfare Fund. and against the Debtor;
13. Judgment in favor of Suffolk Materials Corp. and against the Debtor;
14. Judgment in favor of New York Commercial Lubricants, Inc., d/b/a Metrolube and against the Debtor;

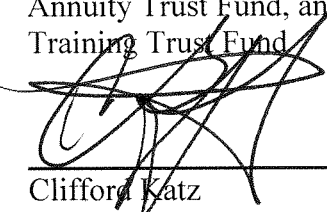
15. Checks issued by by or on behalf of Alleged Debtor to each of the Petitioning Creditors.

VI. **Testimony To Be Offered**

1. Louis Bisignano, Trustee of the Petitioning Creditors.
2. Theresa Cody, senior member of the Funds' collection department; and
3. Joseph Puccio, member of the Funds' collection department.

Dated: July \_\_, 2013

By:   
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Dated: July 31, 2013

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SO ORDERED:

\_\_\_\_\_  
ELIZABETH S. STONG  
UNITED STATES BANKRUPTCY JUDGE